

POLICY NOTE

THE CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010 (COMMENCEMENT NO. 15 AND SAVINGS PROVISIONS) AND THE AIR WEAPONS AND LICENSING (SCOTLAND) ACT 2015 (COMMENCEMENT NO. 8) ORDER 2018

SSI 2018/102 (C. 10)

1. The above instrument is made in exercise of the power conferred by sections 201(1) and (2) and 206(1) of the Criminal Justice and Licensing (Scotland) Act 2010 (“the 2010 Act”) and section 88(2) and (3) of the Air Weapons and Licensing (Scotland) Act 2015 (“the 2015 Act”). It is not subject to any parliamentary procedure.

Policy Objectives

2. This Order brings the provisions at section 184 and 197 of the 2010 Act and the provisions at section 59 of the 2015 Act into force on 29 June 2018.
3. The Bill for the 2010 Act received Royal Assent on 6th August 2010. Sections 201, 202, 204, 205 and 206 of the 2010 Act came into force on Royal Assent. The Bill for the 2015 Act received Royal Assent on 4 August 2015. Sections 60(1) and (2), 84, 85, 86, 88 and 89 of the 2015 Act came into force on the following day. The links below record the passage of each of the Bills through Parliament:

<http://www.parliament.scot/parliamentarybusiness/Bills/16193.aspx>

<http://www.parliament.scot/parliamentarybusiness/Bills/76383.aspx>

4. This Order forms part of an implementation package for the 2010 Act. This is the fifteenth Commencement Order. Specifically, it brings into force on 29 June 2018 sections 184 and 197, the final two alcohol licensing provisions of the 2010 Act.
 - **Section 184** - this section is commenced in so far as it has not already been commenced by The Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No. 6, Transitional and Savings Provisions) Order 2010. This section inserts section 40A into the Licensing (Scotland) Act 2005 (“the 2005 Act”) to require a premises licence holder to notify the Licensing Board if a person becomes or ceases to be a connected person or interested party and to set out the name and address and date of birth of that person. It also makes some amendments to sections 48, 147 and 148 the 2005 Act. To address concerns that these provisions would impose unreasonable burdens on the alcohol licensed trade to notify changes, section 59 of the 2015 Act made amendments so that the notification requirements apply, as at present, only to connected persons.
 - **Section 197** – this section is commenced, and amends section 15 of the 2005 Act to widen the powers available to Licensing Standards Officers (LSOs) when investigating activities carried out on licensed premises. LSOs were created under the 2005 Act and have the role of providing information and guidance on the operation of the Act; supervising compliance by licence holders with licence

conditions and the provisions of the 2005 Act; and providing mediation services for disputes between licence holders and other persons concerning compliance with the 2005 Act. Section 197 enables them to take copies of documents found on the premises, and seize substances, articles or documents in the course of an investigation. It also provides protection for those wishing to withhold documents or information on the grounds of confidentiality or in the interests of avoiding self-incrimination and allows Ministers to make regulations on the procedures to be followed by LSOs in exercising their powers and on the treatment of items seized. In order to provide clarity to any investigations the Order makes a savings provision so that any inspection commenced but not concluded prior to section 197 coming into force should continue to be investigated under the old arrangements.

5. The Order also forms part of an implementation package for the 2015 Act. The provisions of the 2015 Act are being commenced in several stages. This is the eighth Commencement Order. Specifically, it brings into force on 29 June 2018 section 59, an alcohol licensing provision of the 2015 Act.
 - **Section 59 of the 2015 Act** – this section is commenced, and revokes the provisions at section 184(2) and (3) of the 2010 Act as far as they refer to ‘interested party’ or ‘interested parties’. To address concerns raised that section 184 would have the unintended consequence that a premises manager would no longer have vicarious liability, section 59 also amends the definition of an interested party at section 147(5) of the 2005 Act to permit that a premises manager can be an interested party and therefore be subject to vicarious liability for offences under section 141B of the 2005 Act. This section and the outstanding provisions at section 184 of the 2010 Act, relating to interested parties, are commenced simultaneously.

Consultation

6. No formal consultation was carried out in relation to this Order. However, formal consultation took place before the Bills for the 2010 Act and the 2015 Act were introduced. Informal consultation with stakeholders took place during the Bills’ parliamentary passage.

Impact Assessments and Financial Effects

7. Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were carried out in relation to the Bills for the 2010 Act and the 2015 Act. All provisions within the Bills were assessed to make sure that policies being taken forward through the Bill met equal opportunities and regulatory requirements. The links below show the relevant documentation:

Equality Impact Assessments

2010 Act <http://www.gov.scot/Publications/2009/03/19112409/2>

2015 Act <http://www.gov.scot/Publications/2014/05/3617>

Business and Regulatory Impact Assessments

2010 Act <http://www.gov.scot/Publications/2009/03/04114410/1>

2015 Act <http://www.gov.scot/Publications/2014/05/7168>

**Criminal Law, Practice and Licensing Unit
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